



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

TO: Barry E. Hill, Director, Office of Environmental Justice ("OEJ")
Office of Enforcement and Compliance Assurance ("OECA")

FROM: Theodore J. Kim, Legal Counsel, OEJ/OECA /s/ *Ted Kim*

DATE: April 13, 2006

RE: "Environmental Justice in the News" for the Week Ending April 14, 2006

This memorandum summarizes select environmental justice news actions for the period beginning March 16, 2006 through the week ending April 14, 2006. The summary is limited to Lexis/Nexis searches conducted using the query: "(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/25 minorit! or low***income) or (executive order 12898) or (civil right! w/25 environmental) or ("fair housing act" w/25 (environment! or zon!))." Please note that multiple articles covering the same topic were not included. Similarly, articles on international or foreign-based environmental justice issues were not included, unless they specifically pertained to the United States.

1. **News Items.**

The following news was particularly noteworthy:

- **"Cashing in on the Katrina Cleanup; Why the Army Is About to Hand an Indian Tribe an Enormous No-Bid Contract," Business Week (Apr. 10, 2006) at 38.** According to the article, the Mississippi Choctaw Indians ("Choctaws") will likely receive a \$300 million no-bid federal contract for post-Katrina cleanup in Mississippi. The Choctaws received national notice last year when they were identified as one of Jack Abramoff's biggest clients by paying the disgraced Republican lobbyist more than \$27.6 million to sway lawmakers on gaming issues. However, due to contracting laws that favor Native Americans and political pressure from Congress "to steer Hurricane Katrina cleanup cash to home state companies," the Choctaws appear poised to replace AshBritt, Inc., a Florida-based contractor who currently holds the contract. A loophole in the Small Disadvantaged Business Utilization Program allows companies that Native American, Alaskan, or Hawaiian tribes own to bid with no

competition for a contract. The article noted a few downsides with awarding the contract to the Choctaws, however. IKBI Inc., the Choctaws' new contracting company who would receive the contract, has never won a federal contract before and only has seven employees. In addition, IKBI apparently plans to subcontract much of the work "to a large white-owned outfit in Tennessee." Finally, the Mississippi companies that AshBritt hired to do the actual cleanup work would be pushed aside for the subcontractor in Tennessee.

- **"Environmental Protection Agency; New England Community-Based Nonprofits May Apply for Environmental Protection Agency Grant," Pharma Investments, Ventures, and Law Weekly," (Apr. 9, 2006) at 91.** According to the article, the New England Regional Office of the United States Environmental Protection Agency ("EPA") recently accepted applications for the Environmental Justice Small Grants ("EJ Small Grants") Program and the Environmental Justice Collaborative Problem-Solving ("CPS") Program, which were designed to assist local groups reduce environmental risks in communities. The Region plans to fund three projects totaling \$200,000. To aid applicants, EPA staff offered a series of conference calls to discuss the eligibility criteria. Applicants could only apply for one or the other grant program, not both. The EJ Small Grants Program will fund two projects at \$50,000 each that can "form collaborative partnerships, educate the community, develop a comprehensive understanding of local environmental and/or public health issues, and identify ways to address these issues at the local level." In contrast, the CPS Program will provide \$100,000 to the project that addresses "an existing local environmental and/or public health issue." The successful CPS project cannot focus on education or training.
- **"Stricter Regulations Passed on Flaring," Vallejo Times Herald (CA Apr. 6, 2006).** According to the article, the Communities for a Better Environment ("CBE") celebrated the Bay Area Quality Management District's ("District") decision on April 5, 2006 to strengthen a refinery flare control rule. Specifically, the District required the investigation of all refinery flares to determine the cause of flaring and prevent future flaring. Flares are intended for use as a safety measure to quickly dispose of gasses and prevent explosions or larger releases. However, EPA and CBE have demonstrated that refineries have abused flares, which can release as much as 50 tons of pollution into the environment, by using them to dispose of gases in non-emergency situations. CBE characterized the District's decision as "a big victory for the mainly low-income and minority communities surrounding the five large refineries in the Bay Area."
- **"Lead Found in Soil of Many Areas of N.O.; Contamination by Toxic Metal Predates Katrina, Scientists Say," Times-Picayune (Apr. 6, 2006).** According to the article, lead in the soil remains a persistent

problem in the effort to build a new and better New Orleans after Hurricane Katrina. Although the lead contamination issue predates Hurricane Katrina, government agencies must now contend with the issue as environmental surveys reveal widespread areas of lead contamination across the City. One expert on lead contamination believes that 40 percent of New Orleans “has soil lead levels above 400 parts per million [which is] considered a health risk.” EPA, however, identified 14 areas of concern but has not decided how to address the contamination. Instead, EPA and state health officials have provided homeowners with tips on how to reduce lead exposure, which led to criticism from those who believe that “government agencies are shirking their responsibility to protect public health.” In particular, the critics voice concern for the children of New Orleans, who are most vulnerable to lead’s ill effects. Parents are urged to get blood lead tests for children between the ages of 6 months and 6 years to address the problem.

- **“Environment Department Issues Final Version of Proposed Solid Waste Regulation Revisions with Historic Environmental Justice Provisions,” Press Release (N.M. Apr. 5, 2006).** The New Mexico Environment Department (“NMED”) issued this press release to announce NMED’s release of the final version of proposed revisions to the State’s solid waste regulations. The press release asserted that NMED’s action will position the State “among the leading states addressing impacts to under-served communities through formal, state government policies.” The environmental justice provisions articulate requirements for those seeking a permit for a landfill or other solid waste facility. In addition, they lay out provisions for proposed changes to an existing facility to determine if the proposed landfill is within a vulnerable area, which is defined as: “within a four-mile radius of the geographic center of a proposed facility; have a proportion of economically-stressed households higher than the state average; have a population of 50 or more people within any square mile; and contain three or more regulated facilities, which might include a solid waste, a hazardous waste or a Superfund site, or a facility with a large source air quality permit.” Should a facility be within a vulnerable area, the applicant must provide public notice of its proposed plan and inform residents on how to file comments to NMED on the proposal. If NMED believes a significant amount of community opposition to the proposed facility exists, it can require the applicant to prepare a community impact assessment. In addition, the new environmental justice provision mandated that this assessment “have an executive summary that is disseminated in English and, if appropriate, any other predominant language of the community.” According to NMED Secretary Ron Curry, the provisions are historic by “putting the burden on facilities to prove they won’t have a disproportionate effect on the health and environment of a community.” Moreover, Mr. Curry believes that the provisions will protect those who will likely receive the greatest environmental impacts by “requiring that potential impacts be considered

when new solid waste facilities or modifications to existing facilities are proposed.” The regulations are scheduled to go before the State’s Environment Improvement Board (“Board”) for final approval. The Board is scheduled to review the regulations at its May 2-5, 2006 meeting.

- **“Judge Rejects Lawsuit Over Cement Plant,” Courier Post (Cherry Hill, N.J. Apr. 5, 2006) at 1G. *See also* “Lawsuit Claiming Environmental Discrimination in Camden Dismissed,” Associated Press State and Local Wire, (Apr. 4, 2006).** According to the articles, United States District Court Judge Freda L. Watson dismissed a lawsuit on March 31, 2006 that South Camden residents filed five years ago that charged New Jersey’s Department of Environmental Protection (“Department”) with environmental racism for granting an air quality permit to a company, which would burden the area with another polluter. Specifically, the residents argued that the Department intentionally discriminated against them by granting an air quality permit to St. Lawrence Cement Company “in an area that already included the county sewage treatment plant, a trash-to-steam operation, rail lines, and a steady stream of trucks ferrying materials to and from the Camden port.” Judge Watson found that the residents failed to prove that “the state was intentionally discriminating against them or that St. Lawrence intentionally created a nuisance.” The first article noted that it was too soon to determine whether the residents would appeal the decision; however, the company was pleased that the decision dismissed the “bogus” health claims against it. In addition, the Department refuted that it intentionally discriminated against the residents and reaffirmed its commitment to work with the residents to address their concerns.
- **“Business Briefs,” Albuquerque Journal (N.M. Apr. 4, 2006) at S1.** One brief noted that New Mexico Governor Bill Richardson named Cindy Padilla as the Acting Deputy Secretary of the State’s Environment Department. Ms. Padilla replaced Derrith Watchman-Moore, who resigned on March 20, 2006. In a press release announcing her appointment, Ms. Padilla noted her plan to carry on previous efforts “to promote environmental justice.”
- **“Rally Mends Chavez Tribute, Environmental Protest,” Modesto Bee (Apr. 2, 2006) at B1.** According to the article, activists at a rally on April 1, 2006 in Stanislaus County, California focused on environmental justice. The rally, which honored the life of Cesar Chavez, was held at the Covanta Stanislaus Inc. Plant (“Plant”), which is an incinerator at a landfill. The activists, who were concerned about the Plant’s emissions, urged that the Plant launch a better recycling program. The area represents a focal point for the “environmental justice movement, because several polluting entities are gathered in one place.” In addition, one observer noted that “low-income communities with many minorities offer the least resistance when undesirable businesses seek to set up shop.” The

activists wanted to ensure that the burden of pollution is shared equitably. The march melded two themes, a memorial to Cesar Chavez and concerns about the environment. While the dual nature of the event confused some who attended, many thought it was appropriate, because they thought Mr. Chavez, if still living, would have pursued environmental justice near the Plant.

- **“Wake Forest University Baptist Medical Center, Winston-Salem; Policy Changes in Poultry Industry Could Reduce Worker Injuries,” Healthcare Mergers, Acquisitions, and Ventures Week (Apr. 1, 2006) at 162.** According to the article, a survey of Hispanic poultry workers in North Carolina demonstrated that policy changes in poultry processing could lead to fewer worker injuries. The Center for Latino Health Research at Wake Forest School of Medicine conducted the survey, which reported that “almost half of the workers had pain in their hands or arms during the previous month and 25% reported an occupational illness or injury in the past years.” The survey recommended, among other things, the creation of worker safety committees and the implementation of a job-rotation program to help reduce the incidence of injury. 200 Hispanic poultry workers were interviewed for the survey.
- **“EJ Groups Attract Brownfields Liability Protection Bill,” Inside Cal/EPA (March 31, 2006).** According to the article, environmental justice activists have voiced opposition to a new bill, Assembly Bill 2145, that would provide broader liability protections to property owners who have acquired sites for redevelopment. Brownfields developers strongly support the bill, as supporters assert that the “bill will markedly accelerate brownfields development by adding more protections for the industry against lawsuits.” The environmental justice activists, on the other hand, argue that the bill would roll back important protections of the public’s right to sue over public health concerns stemming from contaminated sites. Specifically, the activists believe that the bill “would eviscerate an important part of law that protects communities near contaminated sites from exposure to toxic chemicals: the nuisance provisions of common law. . . . Many of these communities are environmental justice communities Removing their right to intercede when a property owner is releasing toxic chemicals onto their property through air emissions during remediation . . . would be a disservice to these communities.”
- **“State Looks at Environmental Impacts on Residents,” Las Cruces Sun-News (N.M. March 31, 2006) at 8A.** According to the article, New Mexico’s new Environmental Justice Task Force (“Task Force”) that Governor Bill Richardson created in 2005 met for the first time on March 30, 2006. The goal of the Task Force, which will issue a report by the end of the year, is “to get all state agencies thinking about the fairness of environmental impacts as they develop their own rules and regulations and

to give residents a place to have their complaints addressed.” The South Valley of Albuquerque was one region discussed at the meeting, due to the presence of two Superfund sites, two landfills, and Albuquerque’s sewage treatment plant. One observer noted that it was “no accident that those facilities are in an area that is heavily Hispanic.” New Mexico is the sixth state in the United States to have issued an Executive Order dealing with environmental justice.

- **“Cancer Stalks a ‘Toxic Triangle;’ Scientists Disagree about the Risks of TCE. But Residents Near a Former Air Base Are Dead Certain,” Los Angeles Times (March 30, 2006) at A1.** According to the article, residents near the former Kelly Air Force Base in San Antonio, Texas have labeled their neighborhood the “toxic triangle,” because the Air Force has poisoned it with trichloroethylene (“TCE”), an industrial solvent, that has caused elevated rates of liver cancer and higher-than-normal birth defect rates. Although state health officials cannot definitively link TCE to the any adverse health effects, the residents firmly believe that TCE has caused the “abysmal toxic nightmare” that has resulted in the widespread illness prevalent in the neighborhood. One observer noted, “[t]his is a low-income minority population and that raises concerns of environmental justice.” The Defense Department, however, asserted that the scientific evidence that TCE causes cancer is “weak.” Although the Air Force has spent more than \$300 million on cleaning up the Base and expects to spend another \$155 million more over the next 15 years, residents want the cleanup to be completed much sooner.
- **“Toxic Sites Inspire Tour; By Invitation Only: The Point, Organizers Say, Is to Show How Pollution Affects the Community,” Press Enterprise (CA March 30, 2006) at B1.** According to the article, the Center for Community Action and Environmental Justice in Jurupa, California took approximately 45 county officials, labor leaders, and community members on a tour through Riverside County recently to “see first hand the effect that industrial contaminants have in the community.” The tour participants viewed, among other things, a treatment facility for the Stringfellow acid pits in Glen Avon, which is one of the most toxic in the Nation, and the proposed site for warehouse space next to the residential community where young children play. The tour occurred in the Inland Area of California, which “has the distinction of having the highest levels of particulate pollution in the Nation” and whose population appears to be predominantly Latino and low-income. As a result of the tour, one of the companies that contributed pollution, Union Pacific, asserted that it would take measures “to let their truck drivers know ways to reduce their effects on the community,” like not driving through residential areas and not leaving trucks idling.

- **“Analysis: Health Risks in Katrina’s Wake,” UPI (March 28, 2006).** According to the article, health risks remain for residents returning to New Orleans in the aftermath of Hurricane Katrina. Although the immediate threat to the residents’ health and safety has passed, New Orleans’ health care infrastructure still struggles, and the City’s most needy continues to pay the highest price. For example, Charity Hospital, the City’s only Level 1 trauma center, was closed in early March, which residents asserted “left a gap in care for the City’s low-income and uninsured.” As a result, the article noted that some residents, like Dr. Beverly Wright, have undertaken efforts to clean up the neighborhoods themselves. The residents have taken this proactive approach in response to the perception that the federal government has failed to protect the public health.
- **“Senators Call for GAO Inquiry on Toxic Release Inventory Changes,” U.S. Fed. News (March 27, 2006).** The article set forth a press release that Senator James Jeffords (I-VT), the Ranking Member of the Senate Environment and Public Works Committee, issued on March 27, 2006 regarding a letter that a bipartisan group of Senators sent that day to the General Accountability Office (“GAO”). The letter urged GAO to investigate EPA’s proposal to revise the reporting requirements under the Toxic Release Inventory (“TRI”) Program, which the Senators believe will weaken the TRI regulations. Specifically, EPA announced in September 2005 its intent to reduce the frequency of toxics reporting from annual reporting to reporting every two years. In addition, EPA changed the reporting requirements to “allow thousands of facilities to withhold details about pollution volumes, waste management, and treatment if they generate less than 5,000 pounds of toxic chemicals per year.” In their letter, the Senators noted that concerns have been raised with EPA’s proposal in that EPA’s Office of Environmental Information may have failed to adequately consider the impact of the proposals “on EPA programs, other members of the federal family, or the States.” The Senators then requested responses to seven questions, including how the proposal would impact EPA programs that rely on TRI data, such as the “environmental justice program, which relies on TRI data to evaluate potential state and local impacts.” In joining this letter, the article noted that Senator Olympia Snowe (R-ME) stated that the TRI “provides invaluable data to the public about the release of toxic chemicals in our environment. . . . It simply does not make sense for EPA to alter the [TRI] before we have an understanding of the impact these changes will have on communities.” Further, Senator Frank R. Lautenberg (D-NJ) articulated that the “TRI program was established on the principle that the public has a right to know about chemicals that are being stored and released in their communities. The Agency’s proposal would curtail that right, leaving families uninformed. This is wrong.”
- **“Utah to Put Environmental Files Online; Activists Rejoice: Records Will be Accessible to Anyone on the Internet Perhaps As Soon As**

April, Officials Say,” Salt Lake Tribune (March 26, 2006) at B9.

According to the article, the Utah Radiation Control Division intends to place key historical records on International Uranium Corporation’s recycling mill on-line. In addition, the mill’s future records will also go on-line. The State’s decision pleased many residents near the site, who believe that “[k]eeping low-income Utahans who live in the area informed is essential to preserving justice and preventing environmental racism.” By keeping the residents informed, the article noted that more public input was now possible.

- **“U.S. Environmental Protection Agency; Grant Funds Will Assist New England Communities Reduce Environmental Risks,” Health Insurance Law Weekly (March 26, 2006).** The article noted that EPA expects to award between 20 to 25 grants, ranging from \$5,000 to \$30,000, through its Healthy Communities Grant Program (“Program”). The competitive grant program will fund one or two-year projects subject to funding availability. The Program integrates nine EPA New England programs to improve environmental conditions by identifying projects that will achieve measurable environmental, human health, and quality of life improvements across New England. One of the ways that it will accomplish this goal is through identifying and funding projects that target resources to benefit environmental justice areas of potential concern, which represents one of the Target Investment Areas. The deadline for proposals was April 5, 2006.
- **“Activists Outline Possible Suit Over EPA Hurricane Cleanup Efforts,” Inside EPA (March 24, 2006).** According to the article, a coalition of environmental, civil rights, and religious groups may sue EPA “to force EPA to clean up toxic contamination resulting from last year’s Gulf Coast hurricanes, as the Agency appears to be making no new commitments to address the activists’ concerns.” The group sent a letter to EPA Administrator Stephen L. Johnson on March 15, 2006 urging EPA to “immediately clean up the toxic chemical contamination left in the wake of Hurricanes Katrina and Rita.” The letter coincided with Administrator Johnson’s visit to New Orleans on March 17, 2006, when he spoke at the National Wildlife Federation’s (“NWF”) annual meeting and announced that a key component of EPA’s hurricane restoration plan was to “rebuild and rejuvenate our Nation’s wetlands.” However, according to some who attended the meeting, Administrator Johnson “did not address EPA’s potential statutory cleanup mandates.” The letter noted that the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or Superfund) require EPA to eliminate human health risks related to exposure to petroleum and toxic chemicals. In addition, the letter asserted that sampling demonstrated that sediment contamination due to lead, arsenic, and petroleum products were at levels that greatly exceeded EPA’s target levels. Therefore, the letter tried to persuade EPA to take action. While

litigation remains an option, the article asserted that the group does not necessarily want to pursue it.

- **“Groups Warn about Arsenic in Soil; They Tout Cleanup at 10 Homes as Model,” Times-Picayune (March 24, 2006) at 1. *See also* “New Orleans Activists Starting from the Ground Up; A Neighborhood Project Aims to Eradicate What It Calls Contaminated Soil. But State and Federal Officials Say It’s Just ‘Scaremongering,’” Los Angeles Times (March 24, 2006) at A19; “News from USW: New Pollution Data Confirms Concern; Residents to FEMA: This Is How to Clean Up Tainted Properties in New Orleans; Steelworkers and Deep South Center for Environmental Justice Demonstrate How to Conduct Environmental Clean Up and Safety Training,” Business Wire (March 23, 2006); “Dillard University, Steelworkers Tackle Environmental Cleanup,” New Orleans City Business (March 23, 2006).** According to the first article, the Deep South Center for Environmental Justice and the United Steelworkers of America jointly launched a \$35,000 project on March 23, 2006 that would remove two to three inches of existing “contaminated soils” from ten homes in east New Orleans that remained following Hurricane Katrina. The project, which is known as “A Safe Way Back Home,” will replace the removed soil and resod the yards of the homes, which include the home of Dr. Beverly Wright, the Director of the Deep South Center for Environmental Justice. However, the article stated that the Louisiana Department of Environmental Quality’s Environmental Technology Division believes that the project is “completely unnecessary,” and confuses Louisiana’s cleanup standard and screening standard. The other articles provide further substantiation to the first article and do not add any substantial detail.
- **“Water Results Roil Camden Activists; After Levels of a Possible Poison Exceeded Standards, They Called for the Installation of Filtration Systems,” Philadelphia Inquirer (March 24, 2006) at B2.** According to the article, a group of activists, known as the South Jersey Environmental Justice Alliance, demanded that the State’s new attorney general investigate incidences of environmental racism in Camden. The activists’ demands, which also included a call for the installation of filtration systems in Camden, stemmed from an advertisement that United Water Camden, which operates the City’s water system, ran on March 4, 2006 that indicated that Camden’s water system recorded higher than acceptable levels of trichloroethylene (“TCE”). According to United Water Camden, the standard for TCE, which has been linked to liver problems and an increased risk of cancer, is one part per billion; however, the company noted that the “average level of TCE over the last four quarters was 1.79.” One activist feared that Camden’s infant mortality rate may have increased due to the problems with the water.

- **“Rockies Ski Resorts, Habitat, Ranching at Risk; State of the Rockies Project Examines Critical Issues; Annual Colorado College Report and Conference Will Also Grade Region’s Communities on How Well They Nurture Their Youth,” Ascribe Newswire (March 24, 2006).**
According to the article, the Colorado College State of the Rockies Report, which was scheduled for issuance on April 10, 2006, will examine numerous issues, including the fact that the “Rockies’ metropolitan-area minorities and poor live closest to toxic pollution sources.” The Rockies Region is composed of eight states, which are: Colorado; Arizona; Idaho; Montana; Nevada; New Mexico; Utah; and Wyoming. In addition, the issue was scheduled for discussion at the State of the Rockies conference on April 12, 2006.
- **“Study: Toxins Differ for Black, White Kids,” UPI (March 22, 2006).**
According to the article, the University of Wisconsin at Madison issued a study that “shows poor and ethnic minority kids are more exposed than others to toxic pollutants that cause cognitive development and other health problems.” In addition, the study demonstrated that government policies are not ameliorating the situation as reflected by the fact that children of migrant workers are exposed to pesticides. The study called for better enforcement of lead laws as well, since African-American children “in poverty are at an increased risk of lead poisoning than white children.” The study concluded that non-minority children and those with higher incomes score better on IQ tests.
- **“Green Tax Could Help Finance Texas Schools,” University Wire (March 21, 2006).** According to the article, the Texas Center for Policy Studies, Texas Impact, the Lone Star Chapter of the Sierra Club, Environment Texas, and Public Citizen issued a report on March 20, 2006 that asserted that instituting a tax against Texas companies and cars that pollute could collect revenue that would alleviate the State’s school finance crisis. Specifically, the report determined that a green tax on coal use, high energy consumption, and a surcharge on high-polluting motor vehicles could bring in \$1.5 billion over the next couple of years. Power plants that burn coal would be most affected, since coal is not taxed in Texas, unlike natural gas or oil. The proposed tax would be 7.5 percent on coal, which is similar the tax amount for natural gas. The proposed implementation of the green tax is related to concerns over environmental degradation and environmental justice.
- **“Conservation Groups Seek More Minority Workers, Visitors,” Gannett News Service (March 20, 2006).** According to the article, the Wilderness Society has launched a new program, “Keeping It Wild,” which is aimed at encouraging more African-Americans to visit the Nations’ parks, forests, and other public lands. The article noted that the impetus for the program was to “reach the increasingly diverse Americans who will determine the fate of the Nation’s wild places in the decades

ahead.” Specifically, the goal was to reach the communities, such as the African-American community, that will likely make up a larger percentage of the future voting population. The article discussed the misperception that African-Americans do not care about the environment and pointed to the fact that they have created “more than 800 ‘environmental justice’ groups throughout the country to fight back against polluting factories and toxic waste dumped in minority neighborhoods.” The article concluded by discussing some of the initiatives of the program, such as recruiting more African-Americans into the park service.

- **“‘Freeway Close’ Can Be Hazardous to Your Health,” San Bernardino County Sun (March 18, 2006).** According to the article, construction of new housing near freeways continues, despite risks that air pollution from cars using the freeways pose to occupants of the homes. Although health officials are aware of the potential health risks of building homes next to freeways, homebuyers appear to be more concerned with noise pollution rather than the potential risk of such things as ultrafine particles, which can penetrate deep into tissues and organs past lungs and “can be 25 to 30 times heavier next to freeways than they are elsewhere.” Of particular concern to officials is the knowledge that pollution from cars particularly affects growing children. The article noted that the new construction of homes near freeways, presents “almost the flip side of an environmental justice issue,” in that the homes are expensive and affect those people with higher incomes. As one official at the South Coast Air Quality Management District quipped, “[w]ell-off people are entitled to clean air, too.” The article concludes by asserting that city leaders are reviewing the issue and envision eventually placing businesses closer to the freeway and moving housing farther away.
- **“Environmental Protection Agency; Environmental Justice Grants in Support of Communities Directly Affected by Hurricanes Katrina and Rita,” Federal Grant Opportunities (March 17, 2006).** The article set forth a solicitation for proposals from local groups, including non-profit community-based organizations and environmental justice networks, within EPA Region VI to conduct projects within areas of Louisiana and Texas that Hurricane Katrina and Hurricane Rita directly affected. EPA expects to award six grants, ranging from \$25,000 to \$50,000.
- **“Proposal to Transfer Waste to Peekskill Dies,” New York Times (March 12, 2006) at 5.** According to the article, a proposal to close the Yorktown treatment plant and divert waste to a plant in Peekskill has been abandoned. Instead, officials in Yorktown plan to upgrade and expand the plant under a \$40 million plan, which has prompted celebration among residents of the blue-collar, multi-ethnic Peekskill area. The Peekskill residents, who asserted that the proposal constituted environmental racism, had fought for several years to keep the “‘effluent of the affluent,’” out of their community. To aid its effort, Peekskill had enlisted the support of,

among others, the NAACP, which had voiced its “concerns about a wealthy white town shipping waste to a blue-collar city with a large black population.” In contrast, residents of Yorktown are disheartened by the news due to the public health implications of plant expansion.

- **“More Testing Sought Near Creek,” Asbury Park Press (N.J. March 11, 2006) at 3B.** According to the article, New Jersey’s Environmental Justice Task Force released test data for Troutman’s Creek that concluded that an elevated overall cancer rate does not exist near the contaminated site or in the City. The Task Force undertook this environmental justice investigation based on a request from the Concerned Citizens Coalition, which voiced concerns about noxious fumes that emanated from the old coal gasification plant near Troutman’s Creek. Upon its review, which represented the first of its kind after the establishment of the Task Force on February 18, 2004, the Task Force determined that little evidence existed that the potential exposure affected the rate of cancer in the population. The study concluded by recommending more community participation and outreach, as well as further sediment sampling until the remediation at the site is complete.
- **“Proposed Relaxation of Dust Rules Stirs Protest; Speakers Lash Out at EPA Plan, Cattlemen Support It,” Modesto Bee (March 11, 2006) at B3.** According to the article, residents of the San Joaquin Valley are against EPA’s proposal “to drop federal monitoring for dust and soot in communities with fewer than 100,000 people.” The residents voiced their concerns at an EPA hearing in San Francisco on March 8, 2006 and noted that the proposed rollback of the PM-10 standards particularly affects rural residents. Specifically, they assert that “the proposed change would protect only 65 million of the 165 million people who live in areas where dust and soot are a problem” and that “EPA’s own scientific review panel opposes the proposal.” While its most extensive research focuses on city pollution, EPA has suggested that no conclusive evidence existed that rural particulates are as bad as urban particulates. EPA will set the new standard by September 1, 2006.
- **“Seeds of Secrecy,” L.A. Weekly (CA March 10, 2006) at 10.** According to the article, a dispute at the South Central Farm in Alameda, California may lead to the eviction of the farmers, who are currently squatting to maintain possession of the land. At a meeting on the dispute held on March 5, 2006, the farmers voiced their resolve not to leave the land, even if Alameda’s sheriff’s deputies attempt to evict them. According to the article, the land serves “as a flash point for broader environmental-justice issues.” The farmers are mostly Spanish immigrants from Mexico and Central America. They view the land as a “central point for environmentalists, for environmental justice and for those interested in a greener and healthier Los Angeles.”

- **“New Jersey Lawmakers Call on EPA Inspector General to Investigate Inadequate Cleanup of Ringwood,” U.S. Fed. News (March 6, 2006).** The article sets forth a press release from New Jersey Representative Frank G. Pallone (D-District 6) that discusses his request, which he made jointly with Senator Frank R. Lautenberg (D-N.J.) and Senator Robert Menendez (D-N.J.), for EPA’s Inspector General to “investigate the history of the inadequate cleanup of the Ringwood Mines/Landfill Superfund site (“Site”) in Ringwood, New Jersey.” Specifically, the lawmakers asked Bill A. Roderick, EPA’s Acting Inspector General (“IG”), to investigate whether initial cleanup at the Site was adequate and whether EPA had conducted oversight of the cleanup properly until it was withdrawn from the National Priorities List (“NPL”) in 1994. In addition, the lawmakers urged the IG to “determine whether EPA properly included members of the Upper Ringwood community in this cleanup process, and whether the improper cleanup was a result of environmental racism.” The letter concluded with the lawmakers requesting that the IG take an active role in continuing the cleanup of the Site, as well as requesting the retention of an independent expert to oversee the remainder of the cleanup process and ensure that the current cleanup plan adequately protects human health and the environment.
- **“J&B Awaits Approval of Settlement, Others Plan Joint Defense; Proposition 65 Legal Defense Underway,” Bicycle Retailer and Industry News (March 1, 2006) at 24.** According to the article, a court hearing was scheduled on March 7, 2006 to finalize the first of several Proposition 65 settlements between bicycle companies and the Mated Environmental Justice Foundation (“Matad”). The settlement would resolve Matad’s January 2005 claim against J&B Importers (“J&B”) that J&B’s bicycle locks, cable locks, and brake cables for bikes “were coated with plastic that contained lead and that J&B didn’t provide clear warnings to consumers.” Matad informed J&B that it was in violation of Proposition 65, which limits the amount of lead consumer products can contain. According to the article, the settlement stipulates, among other things, that J&B will reformulate the plastic on its products to contain no more than 200 parts per million lead and will pay \$20,000 in monetary relief to two nonprofit groups that advocate for awareness of toxic exposures reduction. The article concludes by discussing the steps that other bicycle companies, like Trek, are taking to address potential Proposition 65 litigation that Matad may bring.
- **“Salazar Wants Broader Look at Impacts in Storage Study,” Pueblo Chieftain (Colorado March 15, 2006).** According to the article, Colorado Congressman John Salazar (D-District 3) has requested the Preferred Storage Options Plan Committee (“Committee”) to review the implications of pending legislation that would increase water storage in the Arkansas Valley. Specifically, Congressman Salazar urged the Committee to consider cumulative impacts on water quality and quantity,

as well as cumulative environmental impacts. In addition, Congressman Salazar asserted that the cumulative social and economic impact of “exchanges, water trades, and out-of-basin transfers” should be evaluated with a particular emphasis on minority and low-income populations. The District Chairman of the Lower Arkansas Valley Water Conservancy District praised Congressman Singletary’s emphasis on minority and low-income populations, as he noted that he has ““been pushing for environmental justice with the situation in the lower valley. . . . Southern Colorado is one of the worst areas in the State for unemployment and non-growth. If ever there was a place for environmental justice in the State, this is it.”” The article noted that the Committee is considering Congressman Salazar’s comments and was scheduled to reconvene on April 11, 2006.

- **“State Urged to Tackle Chemicals; Study Calls for Plan to Cut Use of Toxic Substances,” San Diego Union-Tribune (March 14, 2006) at A1.** According to the article, a report was delivered to the California legislature on March 14, 2006 that recommended that the State establish a comprehensive strategy to cut the use of products containing toxic chemicals. The report reflected the “growing uneasiness in California about the pervasiveness of chemicals in people’s bodies and the environment.” The report, which blamed weak federal oversight for the pervasiveness of chemicals in the State, noted that approximately 23,000 Californians are diagnosed with chronic diseases resulting from workplace exposures to chemicals. To address health issues related to chemical exposure, the report seeks to provide a blueprint to protect public health and promote environmentally friendly products through “green chemistry,” which relates to “the design of chemical products and processes that reduce or eliminate the use of toxic substances” through, among other things, the creation of products that “aren’t hazardous to the environment and don’t accumulate in people’s bodies.” According to the article, environmentalists and public health workers are embracing the report and its finding even before its official release. While these groups praise the report, they note that it fails “to capture the full negative impact of chemicals in California.” The article asserted that EPA had not yet analyzed the report.
- **“California Fish Guidance May Prompt New Discharge Limits,” Risk Policy Report (March 14, 2006).** According to the article, critics assert that fish advisory guidance levels that California’s Office of Environmental Health Hazard Assessment (“OEHHA”) proposed on March 3, 2006 “may not sufficiently protect minority and poor communities from eating contaminated fish from water bodies across the State.” OEHHA issued for public comment draft guidance on tissue levels for fish that addressed several Proposition 65-listed carcinogens that bioaccumulate in fish. The article discussed the importance of the levels, since they may be used in setting maximum contaminant controls or to

post warnings along streams, rivers, or lakes about eating fish from these water bodies. One water quality consultant raised environmental justice concerns with the proposed guidance, however, in articulating that it protects recreational angles and “does not address subsistence fishing by poor and minority communities that may consume as many as three or four meals per week of locally caught fish.” The consultant feared that adoption of the guidance without any further caveats, specifically for banned pesticides, would potentially harm poor and minority communities. Accordingly, the consultant recommended more protective risk levels based on a one-in-a-million chance of getting cancer from eating contaminated fish tissue, which would lead to significantly more violations.

- **“Paint Industry Eyes State Pact to Limit Future Lead Contamination Suits,” Superfund Report (March 16, 2006).** According to the article, a recent holding in Rhode Island may lead states to bring new lead-based paint lawsuits despite a 2003 agreement between 45 states and the paint industry. Under terms of the agreement, industry committed to label paint cans with lead exposure warnings and provide millions of dollars in training for those who renovate, repair, and repaint homes with lead-based paint. Based on the holding in *State of Rhode Island v. Lead Industries Association, Inc.*, in which the court found several companies responsible for creating a “public nuisance” with lead paint, which can adversely affect children’s health, and determined that industry was liable for cleanup costs, states may consider bring lawsuits against industry despite the agreement. However, one industry source believes that the states will not jeopardize the agreement, because millions of dollars that the industry is spending on training would be lost, as would the extensive compliance reports they receive annually under the agreement.
- **“Notre Dame Students to Volunteer on Week Away from School, University Wire (March 13, 2006).** According to the article, nine students from Notre Dame University’s Children and Poverty Seminar will explore prominent environmental and human rights issues stemming from Hurricane Katrina on a trip entitled “Environmental Justice and Human Rights in the Aftermath of Katrina.” Besides service to the community, the trip to New Orleans will provide students with an unique learning experience. Other Notre Dame students will participate in different trips to New Orleans to help rebuild the damaged area, such as a trip entitled “Opportunity Rocks 2006: Rebuilding the Gulf Coast.” This program is for college students from all across the country to travel to New Orleans and work with former Senator John Edwards in helping to clean and rebuild New Orleans.
- **“Brownfield Proposals Spur Criticism,” Buffalo News (March 12, 2006) at B3.** According to the article, five environmental groups have criticized New York’s Department of Environmental Conservation’s

(“DEC”) proposed new standards for brownfields cleanups. Specifically, the groups alleged that the standards “would allow dangerous levels of pollutants to remain on remediated properties” and would not protect children, water supplies, or fish and wildlife. In response, the DEC asserted that it is considering public input for the draft standards.

2. Recent Litigation.

- **In re: Nuclear Management Co., L.L.C., No. 50-255-LR, 2006 NRC LEXIS 56 (March 7, 2006).** The case before the Administrative Law Judges of the Nuclear Regulatory Commission’s (“NRC”) Atomic Safety and Licensing Panel (“Panel”) involved the application of Nuclear Management Company, L.L.C. (“NMC”) to renew its operating license for its Palisades Nuclear Plant (“Plant”) for an additional twenty years beginning in 2011. In determining that certain groups and individuals (“Petitioners”) who jointly filed a petition that challenged various safety and environmental aspects of the proposed license renewal had standing to participate in the proceeding, the Panel also found that no need existed to continue this adjudicatory proceeding. Accordingly, the Panel terminated the proceeding and charged the NRC staff to continue to administratively review the license renewal petition. The Panel reviewed eight contentions, including Contention 8, which asserted that continuing operations of the Plant denied environmental justice. The Petitioners supported their contention by noting, among other things, that: (1) the Plant is located within a predominantly African-American and low-income township; (2) the Plant’s African-American employees have traditionally performed the dirtiest and most dangerous jobs at the reactor, with little to no prospects for promotion; (3) the Plant’s application inadequately addressed the adverse impacts that twenty additional years of operation would have on various federally-recognized tribes in the vicinity of the plant; (4) the Plant’s application also inadequately addressed the adverse socio-economic impacts of a catastrophic radiation release that might occur within the low-income Latin American agricultural workplace; and (5) an unacceptable lack of Spanish language emergency evacuation instructions and notification existed to serve the Spanish-speaking Latino population within 50 miles of the Plant. In response, NMC asserted that the Petitioners’ contention was outside the scope of this proceeding. Moreover, NMC argued that “none of Petitioners’ claims . . . address the ‘essence of an environmental justice claim’ arising under [the National Environmental Policy Act (“NEPA”)] in a NRC proceeding, *i.e.*, ‘disproportionately high and adverse human health and environmental effects’ on minority and low-income populations that may be different from the impacts on the general population.” NMC contended that Petitioners only provided “vague allegations of inadequacies in the Application” and failed to identify any specific deficiency related to the standard quoted above. Further, NMC argued that allegations regarding the workplace do

not relate to disparate environmental impacts. Finally, NMC asserted that Petitioners failed to show that any specific minority population would be subject to disproportionately high and adverse environmental impacts. In upholding the proposition that “environmental justice issues are considered in NRC proceedings only to the extent required by NEPA,” the Panel rejected Contention 8. The Panel determined that some of the issues, such as the employment discrimination claim, that Petitioners raised were not admissible in this proceeding. In addition, Petitioners’ claim of the potentially adverse socio-economic impacts of a catastrophic radiation release was an admissible claim but lacked any factual support that demonstrated disproportionate impacts to the community.

- **In re: Camden County Energy Recovery Assocs. Facility, No. II-2005-01, 2006 EPA CAA Title V LEXIS 2 (Jan. 20, 2006).** Petitioners objected to the issuance of a state operating permit issued, pursuant to Title V of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7661-7661f, to the Camden County Energy Recovery Associates facility (“CCERA”) in Camden, New Jersey on six grounds. Upon its review, EPA granted Petitioners’ claim in part and denied Petitioners’ claim in part. Of particular interest was EPA’s decision with regard to Petitioners’ final claim that the New Jersey Department of Environmental Protection (“Department”) issued the permit in violation of state and federal environmental justice executive orders. Specifically, Petitioners had argued that “granting a permit to a habitual violating facility without stricter monitoring, reporting, and penalty phases violates the state and federal environmental justice executive orders.” From the outset, EPA limited Petitioners’ claim to the Federal Executive Order, because “the state order provides even less of a basis for objection to a Title V permit.” In addition, EPA determined that “[e]nvironmental justice issues can be raised and considered in a variety of actions carried out under the [CAA], as for example when EPA or a delegated state issues a NSR permit. Unlike NSR permits, however, Title V generally does not impose new, substantive emission control requirements, but rather requires all underlying applicable requirements be included in the operating permit.” EPA went on to say that “Title V also includes important public participation provisions as well as monitoring, compliance certification, and reporting obligations intended to assure compliance with the applicable requirements.” Based on these findings, EPA concluded that “Petitioners have not demonstrated how their particular environmental justice concerns demonstrate that the CCERA Title V permit fails to properly identify and comply with the applicable requirements of the [CAA];” accordingly, “the petition to object to the permit on this particular issue must be denied.”

3. **Regulatory/Legislative/Policy.**

The following items were most noteworthy:

A. Federal Congressional Bills and Matters.

- No noteworthy congressional bills and matters were identified for this time period.
- *Miscellaneous House and Senate Congressional Record Mentions of Environmental Justice.*
 - **152 CONG. REC. H1399 (daily ed. Apr. 4, 2006) (statement of Rep. Honda).** Representative Michael M. Honda (D-District 15) addressed the House to commemorate National Public Health Week, whose theme this year focused on the “built environment.” The built environment “refers to building healthy communities to protect and enhance our children’s life.” In addition, the built environment is “any infrastructure with which children come in contact on a daily basis including homes, schools, parks, roads, walkways, and businesses.” Representative Honda voiced his concerns with regard to how “the built environment affects communities of color, native communities, and linguistically isolated communities,” whose residents are “more likely to live, work, and play in environments which have detrimental health effects, often vastly disproportionate to their percentage population.” Representative Honda cited asthma as one detrimental health effect that accounts for three times the number of deaths in minority children compared to white children. Representative Honda further emphasized that “[l]ow socioeconomic status, exposure to urban environmental contaminants, and lack of access to medical care contribute to the increase of deaths in minority communities. [Further,] African-Americans living in low-income neighborhoods have particularly high rates of asthma.” Accordingly, Representative Honda called on the investment of more resources and greater creativity to eliminate racial and ethnic health disparities. In addition, he urged greater access to health care for the uninsured, including over 23 million of whom are minority. Representative Honda concluded by noting that “[n]eighborhoods and communities across the United States are segregated by race and socioeconomic status, which exacerbates the underlying social and economic inequities that perpetuate health inequities. Without significant investment in the built environment for children and underserved communities, these health inequities will continue.”
 - **152 CONG. REC. S2604 (daily ed. March 30, 2006) (statements on introduced bills and joint resolutions).** One of the Bills that was discussed was S. 2482, the Gulf Coast Open for Business Act, which authorized “funding for State-administered bridge loan programs, to increase the access of small businesses to export assistance services in areas in which the President declared a major disaster as a result of

Hurricane Katrina of 2005, Hurricane Rita of 2005, or Hurricane Wilma of 2005, [and] to authorize additional disaster loans.” Senator Mary Landrieu (D-LA) introduced this Bill and spoke about the devastation that Hurricanes Katrina and Rita caused to her home state. Specifically, she discussed the struggle that Louisiana’s small businesses faced to survive, estimating that nearly 19,000 small businesses were catastrophically destroyed, while over 125,000 small and medium-sized businesses were disrupted by the Hurricanes. The new Bill would provide technical assistance, contracting assistance, and assistance with Small Business Administration (“SBA”) disaster loans. For example, the Bill would allow small businesses who received loans to defer payment for one year from the time of loan receipt. In addition, the Bill requires the SBA to submit a detailed proactive disaster response plan to Congress by June 1, 2006, which is the beginning of the next hurricane season. Senator John F. Kerry (D-MA), who cosponsored the Bill spoke next and discussed the need for export assistance and contracting opportunities for small businesses. Specifically, the Bill contains provisions that help small businesses compete for federal contracts in the short term. In addition, Senator Kerry noted that the Bill provides expanded access to bonding, which will likely increase small business participation.

- **Federal Register Notices.**

- **EPA, PM2.5 De Minimis Emission Levels for General Conformity Applicability, 71 Fed. Reg. 17,047 (Apr. 7, 2006).** EPA proposed to amend its Clean Air Act (“CAA”) regulations that require federal actions to conform to the appropriate State, Tribal, or Federal implementation plan for attaining clean air to add *de minimis* emissions levels for particulate matter with an aerodynamic diameter equal to or less than 2.5 microns (“PM2.5”) National Ambient Air Quality Standards (“NAAQS”). In its discussion on the proposed rule’s conformity to Executive Order 12898, EPA asserted its belief that “these proposed revisions to the regulations should not raise any environmental justice issues. The proposed revisions to the regulations would, if promulgated, revise procedures for other Federal agencies to follow. They do not disproportionately affect the health or safety of minority or low-income populations.” Comments on the proposed rule are due by May 5, 2006.
- **EPA, PM2.5 De Minimis Emission Levels for General Conformity Applicability, 71 Fed. Reg. 17,003 (Apr. 7, 2006).** EPA took direct final action to amend its CAA regulations that require federal actions to conform to the appropriate State, Tribal, or Federal implementation plan for attaining clean air to add *de minimis* emissions levels for particulate matter with an

aerodynamic diameter equal to or less than PM_{2.5} NAAQS. The direct rule amendments take effect on June 5, 2006, without further notice, unless EPA receives adverse comment by May 5, 2006 on the proposed rule mentioned directly above. As discussed above, EPA does not believe that the rule presents any environmental justice issues.

— **EPA, Organic Arsenic Herbicides Risk Assessments; Notice of Availability and Risk Reduction Options, 71 Fed. Reg. 17,093 (Apr. 5, 2006).**

EPA announced the availability of its risk assessments and related documents for the pesticides monosodium methanearsonate (“MSMA”), disodium methanearsonate (“DSMA”), calcium acid methanearsonate (“CAMA”) and cacodylic acid (collectively the “organic arsenic herbicides”). In soliciting public comment on these documents by June 5, 2006, EPA requested that the public suggest risk management ideas or proposals to address the identified risks. EPA is developing a Reregistration Eligibility Decision (“RED”) for the organic arsenic herbicides through a modified four-phase public participation process to ensure that all pesticides meet current health and safety standards. To help address potential environmental justice issues, EPA seeks, among other things, “information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to the organic arsenic herbicides, compared to the general population.”

— **EPA, Resource Conservation and Recovery Act Burden Reduction Initiative, 71 Fed. Reg. 16,862 (Apr. 4, 2006).** EPA promulgated this final rule, pursuant to the Paperwork Reduction Act (“PRA”), to change regulatory requirements of the Resource Conservation and Recovery Act (“RCRA”) hazardous waste program to reduce the paperwork burdens these requirements impose on the States, EPA, and the regulated community. Under the final rule, EPA estimated that it would save from 22,000 to 37,500 hours per year in total annual hours and save \$2 million to \$3 million per year in total annual costs. In addition, the rule will streamline EPA’s information collection requirements and ensure that only necessary information to implement the RCRA program is collected. Moreover, the rulemaking will continue to protect human health and environmental goals. With regard to Executive Order 12898, EPA noted that it considered the impacts of the final rule on low-income populations and minority populations. In concluding that the rule does not present disproportionately high impacts, EPA determined that “the rule modifies or eliminates paperwork requirements that were deemed unnecessary or infrequently used by regulators. However, the rule preserves the technical requirements underlying these paperwork requirements.

In addition, regulators continue to have access to all facility paperwork held on site, should the need arise.”

- **DHS, Environmental Planning Program, 71 Fed. Reg. 16,790 (Apr. 4, 2006).** The United States Department of Homeland Security (“DHS”) promulgated this notice to announce that it was issuing its final policy and procedures for implementing the National Environmental Policy Act of 1969 (“NEPA”) and related executive orders and requirements. Specifically, Management Directive 5100.1 (“Directive”), “Environmental Planning Program,” establishes policy and procedures to ensure the integration of environmental considerations into DHS’s unique mission. It establishes policy, sets goals, and provides tool for carrying out federal environmental policy. Of particular interest was the Directive’s provisions related to Public Involvement, which require: the presence of minority or economically-disadvantaged populations that may be impacted be considered as one of the factors in preparing an environmental assessment; notice to be provided to minority and low-income populations by the most effective and efficient means with regard to NEPA-related hearings, public meetings, and the availability of environmental documents; and special effort be made to identify and perform outreach to minority and low-income populations. In addition, the Directive requires consultation with minority and low-income populations as required under NEPA for scoping and other public involvement activities. The Directive will take effect on April 19, 2006.

- **EPA, Criteria for the Safe and Environmentally Protective Use of Granular Mine Tailings Known as “Chat,” 71 Fed. Reg. 16,729 (Apr. 4, 2006).** EPA proposed mandatory criteria for the environmentally protective use of Chat for transportation construction projects carried out in whole or in part with federal funds and a certification requirement. Specifically, EPA proposes the encapsulation in hot mix asphalt concrete or Portland cement concrete of Chat used in transportation projects. EPA also proposes to establish recommended criteria as guidance on the environmentally protective use of Chat for non-transportation cement and concrete projects. Comments are due by May 4, 2006. EPA asserted that the proposal addressed the environmental and human health conditions of minority and low-income populations. Its analysis indicated that Chat piles are located near low-income populations in some instance. EPA believes its action will likely improve environmental protection, because the “removal of Chat from piles for transportation applications that are considered environmentally protective would likely have a positive impact on these communities.”

- **DOD, Notice of Intent to Prepare a Joint Environmental Impact Statement/Environmental Impact Report for the Proposed BNSF Cajon Subdivision Third Main Track Project Keenbrook to Summit, San Bernardino County, CA, 71 Fed. Reg. 16,296 (March 31, 2006).** The United States Department of Defense's Army Corps of Engineers ("Corps"), Los Angeles District, announced that it intends to prepare a joint Environmental Impact Statement/Environmental Impact Report ("EIS/EIR") to analyze the environmental effects of, and support the permit decision related to, the proposed construction of a third main track through the Cajon Subdivision, between Keenbrook and Summit. The benefits of the additional third main track include increasing operational flexibility, increasing operational efficiency, and reducing severe congestion during peak travel periods. The EIS/EIR will analyze the potential direct, indirect, and cumulative impacts of the environmental range of alternatives, including the proposed project and No Action/No Federal Action Alternative. Potential impacts associated with the proposed action will be fully evaluated, including the socioeconomic resource category, which includes environmental justice. Comments must be submitted by May 1, 2006.
- **EPA, Considerations for Developing Alternative Health Risk Assessment Approaches for Addressing Multiple Chemicals, Exposures and Effects; External Review Draft, 71 Fed. Reg. 16,306 (March 31, 2006).** EPA announced a 45-day public comment period for the draft document, "Considerations for Developing Alternative Health Risk Assessment Approaches for Addressing Multiple Chemicals, Exposures and Effects" (EPA/600/R-06/013A). The National Center for Environmental Assessment, within EPA's Office of Research and Development, prepared the document. The document was prepared in part due to environmental justice concerns that have been raised "over the past 11 years [that] have highlighted the importance of estimating cumulative risk." Comments on the document are due by May 15, 2006.
- **DOD, Intent to Prepare a Draft Supplement to the Environmental Impact Statement to Evaluate Construction of Authorized Improvements to the Federal Gulfport Harbor Navigation Project in Harrison County, MS, 71 Fed. Reg. 16,294 (March 31, 2006).** The Corps, Mobil District, announced its intention to prepare a Draft Supplement to the Environmental Impact Statement ("DSEIS") to address the potential impacts of construction of authorized improvements to the Federal Gulfport Harbor Navigation Project in Harrison County, Mississippi. The DSEIS will ensure compliance with NEPA and assess the potential impacts of two alternatives: the No Action; and widening to the

authorized project dimensions. Among the significant issues that the DSEIS will closely analyze is environmental justice. The DSEIS will likely be made available for public review in May 2006.

- **EPA, Control of Hazardous Air Pollutants from Mobile Sources, 71 Fed. Reg. 15,804 (March 29, 2006).** EPA promulgated this proposed rule that would establish controls on gasoline, passenger vehicles, and gas cans to significantly reduce emissions of benzene and other hazardous air pollutants (“mobile source air toxics”). Specifically, EPA proposed control limits on benzene content and exhaust emissions of hydrocarbons from passenger vehicles when they are used during cold temperatures. Besides the significant reduction in emissions of benzene and the other mobile source air toxics, the proposed rule would result in “additional substantial benefits to public health and welfare by significantly reducing emissions of particulate matter from passenger vehicles.” Comments on the proposed rule are due by May 30, 2006. A public hearing is scheduled for April 12, 2006. With regard to Executive Order 12898, EPA evaluated the population living near roadways and found that this population had a greater fraction of low-income and minority residents. Since this proposed rule would reduce emissions from roadways, EPA believed that this rule would disproportionately benefit those residents living near roadways. Accordingly, “this proposed rule does not have a disproportionately high adverse human health or environmental effect on minority populations.”
- **DOT, Preparation of Environmental Impact Statement for the South Florida East Coast Corridor Transit Analysis in Southeast Florida; Including Miami-Dade, Broward, Palm Beach Counties, FL, 71 Fed. Reg. 15,511 (March 28, 2006).** The United States Department of Transportation’s (“DOT”) Federal Transit Administration (“FTA”) promulgated the notice to announce that an Environmental Impact Statement (“EIS”) will be prepared for the South Florida East Coast Corridor Transit Analysis to evaluate transit improvements in Miami-Dade, Broward, and Palm Beach Counties, Florida. Public scoping meetings will be held between April 17 and April 24, 2006. Comments are due by May 30, 2006. A tiered EIS will be done to evaluate the purpose and need of the project. Tier 1 will evaluate preferred technologies and alignments through areas with heavily congested roadways and under-served, transit-dependent populations. The EIS will consider, among other things, potential environmental justice issues in addressing impact areas.
- **EPA, Chloroacetanilide Cumulative Risk Assessment; Notice of Availability, 71 Fed. Reg. 15,726 (March 29, 2006).** EPA announced the availability of its cumulative risk assessment for the

chloroacetanilide group of pesticides. The cumulative risk assessment was performed pursuant to the Food Quality Protection Act (“FQPA”) and evaluated the risk from food, drinking water, and non-occupational exposure that resulted from all registered uses of chloroacetanilide pesticides. EPA solicits public comment on this document by May 30, 2006. To help address potential environmental justice issues, EPA seeks, among other things, “information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to chloroacetanilide pesticides, compared to the general population.”

- **DOT, Programmatic Environmental Impact Statement: Launches and Reentries Under an Experimental Permit, 71 Fed. Reg. 15,251 (March 27, 2006).** DOT’s Federal Aviation Administration (“FAA”) announced that it is preparing a Programmatic Environmental Impact Statement (“PEIS”) to evaluate the impacts of launches and reentries of reusable suborbital rockets conducted under an experimental permit. The PEIS intends to facilitate the development of a permit application package and FAA’s subsequent environmental review, as well as to ensure that the issuance of an experimental permit is consistent with FAA’s mission of protecting public health and safety, safety of property, and the national security and foreign policy interests of the United States. The proposed action for this PEIS is to issue experimental permits for the launch and reentry of reusable suborbital rockets. Included among the preliminary list of potential environmental issues that the PEIS will analyze is environmental justice. Comments on the appropriate scope of the PEIS are due by May 19, 2006.
- **DOC, Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Issuance of an Incidental Take Permit, 71 Fed. Reg. 15,168 (March 27, 2006).** The National Marine Fisheries Service of the National Oceanic and Atmospheric Administration announced that it would prepare an EIS to examine the proposed implementation of a Habitat Conservation Plan and the issuance of one incidental take permit for the City of Portland, Bureau of Water Works. Comments on the alternatives and issues that the EIS will address are due by May 26, 2006, and public scoping meetings will be held on June 6 and June 7, 2006. Among other things, comments will be solicited regarding certain components of the human environment, such as environmental justice.
- **EPA, Implementation of the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1: Reconsideration, 71 Fed. Reg. 15,098 (March 27, 2006).** EPA promulgated the notice to request comment on the overwhelming transport classification for 8-hour

ozone nonattainment areas as a petition for reconsideration of EPA's final rule to implement the 8-hour ozone NAAQS requested. In addition, EPA requests comment on the draft guidance, entitled "Criteria For Assessing Whether an Ozone Nonattainment Area is Affected by Overwhelming Transport" and applicable requirements that would apply to areas receiving the overwhelming transport classification. Besides requesting comments by May 12, 2006, EPA was scheduled to hold a public hearing on April 12, 2006. Of particular note was EPA's conclusion that the rule should not raise any environmental justice issue, because it provides a framework for improving environmental quality and reduces health risks for areas that may be designated nonattainment.

— **DOD, Public Scoping Meeting and Preparation of Draft Environmental Impact Statement for Widening and Deepening of the Metagorda Ship Channel in Calhoun County and Matagorda County, TX, 71 Fed. Reg. 14,857 (March 24, 2006).**

The Corps, Galveston District, announced its intention to prepare a Draft Environmental Impact Statement ("DEIS") to assess the social, economic, and environmental effects of the proposed widening and deepening of the Metagorda Ship Channel. The DEIS will assess the potential impacts of numerous alternatives, ranging from the No Action and preferred alternatives. Among the significant issues that the DEIS will likely analyze is environmental justice. A public scoping meeting is scheduled for April 25, 2006.

— **DOD, Intent to Prepare a Supplemental Environmental Impact Statement 2.0 for the Lower Mud River Watershed Project, Milton, Cabell County, W.V., 71 Fed. Reg. 14,856 (March 24, 2006).** The Corps, Huntington District, announced that it will prepare a Supplemental Environmental Impact Statement ("SEIS"), which will evaluate the potential impacts to the natural, physical, and human environment resulting from the utilization of soil borrow material for the construction of the selected plan for the proposed flood damage reduction measures at the Lower Mud River Watershed, in the City of Milton, Cabell County, West Virginia. Corps seeks comments on the SEIS, which will evaluate, among other things, environmental justice issues associated with the selection of borrow sites.

— **DHS, NEPA Alternate Arrangements for Critical Physical Infrastructure in New Orleans, 71 Fed. Reg. 14,271 (March 23, 2006).** DHS and the Council on Environmental Quality ("CEQ") promulgated this notice to announce that they have established Alternative Arrangements, pursuant to NEPA and the CEQ Regulations for Implementing the Procedural Requirements of NEPA ("CEQ Regulations"), for Grants to Reconstruct Critical

Infrastructure in the New Orleans Metropolitan Area that the Federal Emergency Management Agency (“FEMA”) administers. These Alternative Arrangements will enable timely action on the expected large number of grant applications to restore safe and healthy living conditions in the New Orleans Metropolitan Area (“NOMA”). In addition, these Alternative Arrangements will enable FEMA to consider the potential for significant impacts to the human environment from its approval to fund the reconstruction of critical physical infrastructure in NOMA through its grant programs. Funding for these programs are particularly necessary since the “wind and flood damage from Hurricane Katrina in NOMA was concentrated in low-income and minority communities. As a result, reconstruction of the critical infrastructure in these areas and its related environmental effects . . . may disproportionately impact these communities.” FEMA requests comments on this notice by May 22, 2006, particularly because the Alternative Arrangements will affect many people, including low-income and minority communities. In addition, the environmental impacts of the actions will likely be controversial.

— **DOE, Advance Notice of Intent to Prepare an Environmental Impact Statement for the Global Nuclear Energy Partnership Technology Demonstration Program, 71 Fed. Reg. 14,505 (March 22, 2006).** The United States Department of Energy (“DOE”) provided this Advance Notice of Intent (“ANOI”) to prepare an EIS, pursuant to NEPA, for the Global Nuclear Energy Partnership Technology Demonstration Program (“GNEP”). The GNEP will demonstrate certain technologies that could change the way spent nuclear fuel from commercial light-water nuclear power reactors is managed. The EIS will include an analysis of, among other things, the potentially disproportionately high and adverse effects on low-income and minority populations. Comments on the ANOI are requested by May 8, 2006.

— **EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (“Recipient Guidance”), 71 Fed. Reg. 14,207 (March 21, 2006).** EPA’s Office of Civil Rights announced the publication of its final “Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs” (“Guidance”) that took effect that day, March 21, 2006. The Guidance was developed for recipients of EPA assistance that implement environmental permitting programs. Among other things, the Guidance discusses various approaches and suggests tools that recipients can use to enhance the public involvement aspects of their current permitting programs. In addition, it addresses potential issues related to Title VI of the Civil Rights Act of 1964 (“Title VI”), as well as EPA’s

regulations implementing Title VI. The April 1999 “Report of the Title VI Implementation Advisory Committee: Next Steps for EPA, State, and Local Environmental Justice Programs,” provided the core components of the Guidance. The notice stated that in implementing Title VI and developing the final Guidance, EPA reaffirmed its commitment to the principles that: “[a]ll persons regardless of race, color, or national origin are entitled to a safe and healthful environment; [s]trong civil rights enforcement is essential in preventing Title VI violations and complaints; [e]nforcement of civil rights laws and environmental laws are complementary, and can be achieved in a manner consistent with sustainable economic development; [e]arly, preventive steps, whether under the auspices of state and local governments, in the context of voluntary initiatives by industry, or at the initiative of community advocates, are strongly encouraged to prevent potential Title VI violations and complaints; [m]eaningful outreach and public participation early and throughout the decision-making process is critical to identify and resolve issues, and to also assure proper consideration of public concerns; and [i]ntergovernmental and innovative problem-solving provide the most comprehensive response to many concerns raised in Title VI complaints.”

— **DOT, Environmental Impact Statement on Seattle Ferry Terminal — Seattle, WA, 71 Fed. Reg. 13,892 (March 17, 2006).** DOT’s FTA promulgated the notice to announce that an EIS will be prepared for the Washington State Ferries Seattle Ferry Terminal Project (“Project”) in Seattle, Washington. The Project’s primary objectives include replacing the aging and deteriorating dock structure, accommodating the projected growth of vehicle and passenger traffic, enhancing operational effectiveness and decreasing congestion on adjacent streets, and improving passenger connections to multi-modal transportation services and mobility into downtown. The notice announced that two public meetings will be held April 20 and April 25, 2006 at different locations, and comments on the purpose and need, as well as on the scope of alternatives and impacts to be considered in the EIS are requested by May 19, 2006. Environmental justice is one of the potential areas of impact that will be evaluated.

— **DOT, Southwest Gulf Railroad Company—Construction and Operation Exemption—Medina County, TX, 71 Fed. Reg. 12,773 (March 13, 2006).** DOT’s Surface Transportation Board (“Board”) issued this notice of intent to prepare a Supplemental Draft EIS. The notice discussed the environmental review process that was conducted to date, as well as the basis for determining that a Supplemental Draft EIS was necessary. In addition, the Notice addressed the scope of the Supplemental Draft EIS, which will

include an environmental justice analysis, and the remaining steps needed to conclude the environmental review process.

B. State Congressional Bills and Matters.

- **California, Senate Bill 354, introduced on February 16, 2005 by Senator Martha M. Escutia (D-District 30). *Status: Amended and re-referred to Assembly Committee on Environmental Safety and Toxic Materials on March 13, 2006.*** This Bill requires the Governor to appoint a Task Force on the Coordination of Site Cleanup Programs and would require the Task Force to inform the California Environmental Protection Agency on implementing administrative improvements to California's site cleanup oversight programs and recommend how to best coordinate site cleanup oversight responsibilities within the Agency. Among the representatives that should be included on the Task Force are a nonprofit organization specializing in environmental justice and a nonprofit organization specializing in environmental protection, environmental justice issues, or both of these areas.
- **California, Senate Bill 1205, introduced on January 25, 2006 by Senator Martha M. Escutia (D-District 30). *Status: Amended and Rereferred to Senate Judiciary Committee on March 30, 2006.*** This Bill, the "Children's Breathing Right's Act," would increase the maximum civil penalties and criminal fines for specified violations of air pollution laws. The Bill seeks to "improve the enforcement of [the State's] air quality laws and ensure that penalties are not so low as to be a minor inconvenience to a serious and chronic air polluter, [the State's] children's right to clean and healthy air can be better protected, as can the right to environmental justice." In addition, the Bill would create a new category of "serious and chronic violators," as well as mandate the establishment of a state website to track violations. A percentage of the penalties collected would be used to fund children's health and asthma initiatives.
- **California, Senate Bill 1377, introduced on February 21, 2006 by Senator Nell Soto (D-District 32). *Status: Rereferred to Senate Committee on Environmental Quality on March 28, 2006.*** This Bill will allow the State Air Resources Board to enter into a voluntary agreement with a public or private entity regarding matters involving the control of vehicular air pollution. Any agreement to reduce emissions cannot be longer than two years in duration. Before ratifying an agreement, the State Board shall, among other things, prepare a written report that will include an assessment of the local cumulative impacts and environmental justice implications.
- **California, Senate Bill 1505, introduced on February 23, 2006 by Senator Alan S. Lowenthal (D-District 27). *Status: Rereferred to***

Senate Committee on Environmental Quality on March 28, 2006. Scheduled for Hearing on April 4, 2006. This Bill declares the Legislature's intent to increase the production and use of hydrogen-based alternative fuels by adopting the Hydrogen Highway Network Blueprint Plan ("Plan") that the California Environmental Protection Agency developed. In addition, the Bill provides that when the Plan is implemented, it will be done in a clean and environmentally responsible manner. The Bill would require the State Air Resources Board to adopt regulations that will ensure that state funding for the production and use of hydrogen contributes to the reduction of greenhouse gas emissions, criteria air pollutants and toxic air contaminants. Among other noteworthy provisions includes the Bill's requirement that the California Environmental Protection Agency's Environmental Justice Advisory Committee meet at least twice annually to discuss the production and distribution of hydrogen fuel in the State.

- **California, Assembly Bill 2144, introduced on February 21, 2006 by Assembly Member Cindy Montanez (D-District 39). *Status: Rereferred to Assembly Committee on Environmental Safety and Toxic Materials on March 29, 2006.*** The Bill amends certain sections of California's Health and Safety Code, while adding a section to the State's Water Code. Specifically, the Bill requires a bona fide purchaser, innocent landowner, or contiguous property owner, who seeks immunity from response costs or damage claims relating to a site in an urban landfill area, to enter into an agreement with an agency to perform a site assessment and, if necessary, prepare and implement a response plan. The Bill defines "agency" to mean the Department of Toxic Substances Control, the State Water Resources Control Board, or a California regional water quality board. Included among other Bill requirements was the mandate that the agency consider environmental justice issues for the most-impacted communities, including low-income and racial minority populations, before taking action on the response plan.
- **Connecticut, Senate Bill 290, introduced on February 22, 2006 by the Environment Committee. *Status: Reported out of Legislative Commissioners' Office on April 3, 2006. Favorable Report, Tabled for the Senate Calendar on April 3, 2006.*** This Bill concerns environmental justice and requires the Department of Environmental Protection ("DEP") to identify and compile a list of communities overburdened by pollution. DEP must report to the Environment and Public Health committees no later than March 1, 2007, and every five years thereafter, on the list and its criteria for determining that a community is overburdened. In compiling the list, DEP must ensure the meaningful involvement of those potentially affected by a proposed polluting activity. DEP must notify the chief elected official, health department, and zoning commission of each town, city, or borough where an overburdened community exists by June 1,

2007, and annually thereafter. The Bill requires DEP, the Department of Public Utility Control (“DPUC”), and the Connecticut Siting Council (“Council”) to each adopt regulations by January 1, 2007 that describe their respective consideration of environmental justice in: (1) granting licenses, permits, or authorizations; (2) taking action that could have human health or environmental effects; or (3) other decision-making processes related to certain affecting facilities (*i.e.*, polluting facilities). DEP, DPUC, and the Council must also adopt regulations by January 1, 2007 that describe the actions, as appropriate, each will take to reduce pollution in overburdened communities. The Bill takes effect on October 1, 2006.

- **Florida, Senate Bill 1092, introduced on December 7, 2005 by Committee on Government Efficiency Appropriations. *Status: In General Government Appropriations Committee on April 5, 2006.*** The Bill relates to the redevelopment of brownfields. Among other things, the Bill: increases the amount and percentage of credit that may be applied against the intangible personal property tax and corporate income tax for cost of voluntary cleanup of contaminated site; increases the amount that may be received by taxpayer as incentive to complete cleanup in the final year; requires Enterprise Florida, Inc. to aggressively market brownfields; and decreases the job-creation requirement for rehabilitation of said site. In addition, the Bill specified that any “local governments or persons responsible for rehabilitation and redevelopment of brownfield areas must establish an advisory committee or use an existing advisory committee that has formally expressed its intent to address redevelopment of the specific brownfield area for the purpose of improving public participation and receiving public comments on . . . environmental justice.”
- **Hawaii, Senate Bill 2145, introduced on January 23, 2006 by Senator Colleen Hanabusa (D-District 21). *Status: Referred to House Finance Committee on March 24, 2006.*** The Bill will appropriate an unspecified amount out of the general revenues of the State for the environmental council to contract with a consultant to facilitate and coordinate the State’s environmental justice activities, which will include: (1) defining environmental justice through educational community outreach activities; (2) developing and promulgating a guidance document that addresses environmental justice in all phases of the EIS process; (3) recommending to update the EIS process; and (4) conducting educational and community outreach activities. In addition, the Office of Environmental Quality Control shall contract with the University of Hawaii Environmental Center to conduct a comprehensive review of the State’s current EIS process.
- **Maryland, Senate Bill 350, introduced on January 30, 2006 by Senator Lisa A. Gladden (D-District 41). *Status: First Reading in Senate Education, Health, and Environmental Affairs Committee on***

March 20, 2006. See also Maryland, House Bill 412, introduced on January 27, 2006 by Representative Nathaniel T. Oaks (D-District 41). Status: Third Reading Passed House Environmental Matters Committee on March 17, 2006. Hearing scheduled March 29, 2006.

This Bill establishes a Task Force on Minority Participation in the Environmental Community. It requires the Task Force to evaluate and make recommendations regarding methods of improving minority participation in the environmental community, as well as methods of improving communication to minority communities. In addition, the Task Force should make recommendations on methods for improving the flow of information and services into minority communities. The Task Force should include, among others, one representative from Maryland's Commission on Environmental Justice and Sustainable Communities.

- **New York, Assembly Bill 10372, introduced on March 21, 2006 by Assemblyman Paul D. Tonko (D-District 105). Status: Referred to Assembly Ways and Means Committee on April 4, 2006.** This Bill would re-enact Article Six of the Energy Law with respect to Energy Planning. The Bill would address shortcomings in the previous energy planning law by requiring comprehensive studies of the State's energy needs, as well as analyses of the State's emerging regional energy markets. Provisions of the Bill include: (1) requiring state agencies to report on the progress made to implement identified energy plan policies and priorities; (2) examining the electricity and natural gas markets on a regional and statewide basis to determine where additional supply needs are most critical; (3) examining the least-cost means of meeting the State's energy needs; and (4) identifying and examining alternate locations for the siting of new power plants. The Bill also requires the Power Authority of the State of New York and the Long Island Power Authority to participate in the planning process and to submit strategic, operating, and capital plans. Moreover, the Bill requires an environmental justice analysis of the energy plan.
- **Minnesota, Senate Bill 979, "Healthy Minnesotans Biomonitoring Program," introduced on February 14, 2005 by Senator Becky Lourey (D-District 8). Status: Rereferred to Senate Finance Committee on March 30, 2006.** This Bill requires the Commissioner of Health to provide community based biomonitoring on a voluntary and confidential basis, using biospecimens to identify toxic chemicals in the environment. In addition, the Bill, among other things, (1) defines biomonitoring and biospecimens; (2) requires the examination of breast milk in economically, racially, and geographically diverse communities for toxic chemical identification purposes, (3) calls for expansion of the program upon the availability of funds; (4) requires the Commissioner to examine the possible presence of the chemical in the surrounding environment and to develop recommendations to reduce or minimize possible contamination

or exposure; (5) provides for voluntary participation in the program; (6) requires the development of program guidelines; and (7) establishes the healthy Minnesotans Biomonitoring Program advisory panel and specifies certain membership requirements, such a member from an organization that focuses on environmental justice.

- **Virginia, Senate Bill 107, introduced on January 11, 2006 by Senator Henry L. Marsh III (D-District 16). *Status: Approved by Governor on March 23, 2006. Acts of Assembly Chapter Text on March 31, 2006.***

The Bill amends Virginia law establishing the governing structure of the Martin Luther King, Jr. Living History and Public Policy Center, an independent nonprofit corporation, to conform the statutes with Section 501 (c) (3) of the Internal Revenue Code and federal and state laws governing tax exempt organizations. This Bill, which is a recommendation of the Dr. Martin Luther King, Jr. Memorial Commission, would establish a Board of Trustees (“Board”) and require the Board to, among other things, conduct public forums, conferences, lectures, or research to “address contemporary issues and public policies” on such topics as environmental justice.

- **State Regulatory Alerts.**

— No noteworthy **State Regulatory Alerts** were identified for this time period.